IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEALS NO. 99 AND 101 OF 1997.

FIRST APPEAL NO. 99/1997.

The Economic Development
Corporation of Goa, Daman & Diu Ltd.,
having its registered office at EDC House,
Dr. Atmaram Borkar Road, Panaji,
Goa. .... Appellants.

Versus

1. Land Acquisition Officer,
   Dy. Collector & S.D.O.,
   Panaji, Goa.

2. Shri Raghunath Kuncolienkar
   (deceased) now represented
   by Legal Representatives :-
   1. Smt. Yashoda Raghunath Kunkolkar.
   2. Shri Narendra R. Kunkolkar.
   3. Smt. Neelam N. Kunkolkar.
   4. Shri Suhas R. Kunkolkar.
   5. Shri Devendra R. Kunkolkar.
   6. Shri Shashi R. Kunkolkar.
   7. Kum Babita R. Kunkolkar.
   8. Shri Arun R. Kunkolkar.
   All residents of House No.365,
   Merces, St. Caitan, P.O. Santa Cruz,
   Tiswadi,Goa. .... Respondents.

Shri M.S.Sonak and Ms. P. Bharne, Advocates for the Appellants.

Shri H.R. Bharne, Government Advocate for the Respondent No.1.

FIRST APPEAL NO. 101 OF 1997.

The Economic Development
Corporation of Goa, Daman &
Diu Ltd. having its registered
office at EDC House, Dr.Atmaram

Borkar Road, Panaji, Goa. .... Appellants.

Versus

1. Land Acquisition Officer,
Dy. Collector & S.D.O.,
Panaji, Goa.

2. Francisco Valentinho A.
de Jesus Fernandes Cardoso,
C/o Ausberto Fernandes Souza,
E-245, Rua de Ourem,
Panaji, Goa. .... Respondents.

Shri M.S. Sonak, and Ms. P. Bharne, Advocates for the Appellants.

Shri R.G. Ramani, Advocate for the Respondent No.2.

CORAM: R. M. LODHA, J.

DATE: 5th OCTOBER, 2005.

ORAL JUDGMENT:

These two First Appeals arise out of the common Judgment and Award dated 24.2.1997 passed by the District Judge at Panaji and, therefore, both these appeals were heard together and are being disposed of by this common Judgment.

2. The Economic Development Corporation of Goa, Daman and Diu Ltd., Panaji (for short, 'the Corporation') needed the land for its commercial activities. By the Notification under Section 4(1) of the Land Acquisition Act published in the official Gazette on 19.2.81, an area of 9200 sq.metres

from chalta No.2, P.T. Sheet No.71, Chalta No.89 of P.T. Sheet No.46, Chalta No.9 of P.T sheet No.57 and entire chalta 14 of P.T. Sheet No.57 was proposed to be acquired. The land acquired comprised of paddy fields. The Land Acquisition Officer by his Award dated 5.5.82 fixed the market value of the subject land at the rate of Rs.25/- per sq.m. The claimants (owner as well as tenants) were not satisfied with the award of compensation by the Land Acquisition Officer and, accordingly, sought reference for enhancement of the compensation. The Land Acquisition Case No.338/88 was at the instance of the tenants and the Land Acquisition Case No.11/90 was at the instance of the landlord. The landlord claimed compensation for the acquired land at the rate of Rs.250/- per sq.m. and the tenants claimed compensation at the rate of Rs.75/- per sq.m. The claimants led oral as well as documentary evidence. The owner in his reference case examined Albert Noronha (AW1), Rui Ribeiro Santana (AW2), Prabakar Angle (AW3), Anil Counto (AW4), Bernardino Souza (AW5) and Shaikh Kamruddin (AW6). Besides the aforesaid oral evidence, the landlord in support of his claim produced copies of 5 awards in LAC No.2/79 (Exh.AW1/B), LAC No.32/85 (Exh.AW1/C), LAC No.19/80 (Exh.AW1/D), LAC 30/82 (Exh.AW1/E) and LAC No.31/82 (Exh.AW1/F). The owner also produced two sale deeds (Exh.AW1/G and Exh.AW1/H). Almost on similar lines was the evidence produced by the tenants in their reference.

3. No evidence in rebuttal was produced by the Corporation.

4. The Reference Court fixed the market value of the subject land at the rate of Rs.80/- per sq.m. Accordingly the Judgment and Award was passed in Land Acquisition Case No.11/90. Insofar as the claim of the tenants was concerned, it was restricted to Rs.75/- per sq.m. as they claimed to that extent only. The common Judgment and Award passed by the Reference Court on 24.2.97 as noticed above is subject matter of challenge in these two appeals.

5. Mr. M.S. Sonak, the learned counsel for the Corporation urged that the impugned judgment was principally based on the Judgment of this Court in First Civil Appeal No. 81/1987 decided on August 23/27, 1996. In First Civil Appeal No.81/1987 the Division Bench of this Court fixed the market value of the paddy fields at the rate of Rs.80/- per sq.m. (the said paddy fields being in the vicinity of the subject land) and acquired pursuant to the Notification under S.4(1) of the Land Acquisition Act published on 24.7.1980, but on the matter being carried in appeal to the Supreme Court in Civil Appeal No.4431/1997, the market value was reduced to Rs.40/- per sq.m. by the Supreme Court. The learned counsel for the Corporation, thus, submitted that in the present appeals the market value fixed by the Reference Court needed to be reduced from Rs.80/- to Rs.40/- per sq.m.

The learned counsel for the Corporation would also contend that the evidence in First Civil Appeal No.81/1987 which was carried to the Supreme Court in Civil Appeal No.4431/1997 was almost similar to the evidence on record in the present case. He contended that the claimants in support of their claim relied upon an award in the LAC No.30/82, that award was the subject matter for consideration in First Appeal No.16/1987 and the learned Single Judge of this Court in F.A. No.16/1987 and other connected First Appeals relying upon the Judgment/Order of the Supreme Court dated July 7, 1997 in Civil Appeal No.4431/1997 has fixed the compensation at the rate of Rs.40/- per sq.m. Thus, the learned counsel for the Corporation submitted that the impugned Judgment and Award calls for interference.

6. On the other hand, Shri R. G. Ramani, the learned counsel for the owner-claimant relied upon the judgment of the Supreme Court in the case of ***Communidade of Morombi-O-Pequeno v. State of Goa [(2004) 12 S.C.C. 430]*** and submitted that the subject land being similarly situated to the land that was subject matter of consideration in Communidde of Morombi-o-Pequeno, the market value fixed by the Reference Court is proper and warrants no interference. The learned counsel also submitted that in the Land Acquisition Case No.2/79 for the acquisition of the comparable land, the compensation was awarded at the rate of Rs.80/- per

sq.m. and the said award was accepted by the Corporation. He also submitted that in LAC No.19/80, the land, adjacent to the subject land, was erstwhile salt pan land flooded with water and in that case compensation was awarded at the rate of Rs.100/- per sq.m. The said award also remained unchallenged by the Corporation. The learned counsel for the owner-claimant also invited my attention to the evidence on record particularly evidence of AW.2 and the valuation report prepared by him and submitted that, as per the expert valuer, the market value of the subject land was in the range of Rs.100/- to Rs.150/- per sq.m. but the Reference Court awarded compensation only at the rate of Rs.80/- per sq.m., which cannot be said to be excessive.

7. I reflected over the rival submissions and considered the oral as well as documentary evidence available on record and the Judgment of the Supreme Court in the case of Communidade of Morombi-o-Pequeno (cited supra) and the Order dated July 7, 1997 passed by the Supreme Court in Civil Appeal No.4431/1997.

8. It is true that in the Judgment and award that is impugned before me the Reference Court has heavily relied upon the Judgment of this Court in F.A. No.81/87 wherein the market value of the comparable paddy field was fixed at Rs.80/- per sq.m. It is also true that the Judgment of the

Division Bench of this Court in F.A. No.81/87 came to be challenged by the Corporation before the Supreme Court in Civil Appeal No.4431/1997. It is also accepted position that in its Judgment dated July 7, 1997, the Supreme Court interfered with the Division Bench Judgment of this Court in First Appeal No.81/87 and reduced the market value of the acquired land therein from Rs.80/- to Rs.40/- per sq.m. The learned counsel for the Corporation is also right that based on the aforesaid Order of the Supreme Court passed on July 7, 1997 in Civil Appeal No.4431/1997, the learned Single Judge of this Court in number of First Appeals fixed the market value of the acquired land comprising of paddy fields pursuant to the Notification under Section 4 (1) of the Land Acquisition Act published on 17.4.1980 at Rs.40/- per sq.m. In the backdrop of the aforesaid admitted position, the question that arises for my consideration is whether the market value of the subject land fixed by the Reference Court at Rs.80/- per sq.m. requires reduction or not.

9. For better appreciation of the Order of the Supreme Court dated July 7, 1997 and the Judgment of the Division Bench of this Court in F.A. No.81/1987, few facts that are relevant may be noticed.

10. Prior to the acquisition of the subject land admeasuring 9207 sq.m. pursuant to the Notification dated 19.2.1981 for its project, the Corporation needed land and for that purpose the Notification under

Section 4(1) of the Land Acquisition Act was published in the Official Gazette on 27.4.1980 for acquisition of land comprising 82,278 sq.m. The land sought to be acquired pursuant to the Notification published on 20.7.1980 comprised of paddy fields, salt pans and nallah. The Land Acquisition Officer passed the award fixing the market value of paddy fields at Rs.20/- per sq.m., for salt pans at Rs.12/- per sq.m. and nallah land at Re. 0.50 per sq.m. Many claimants sought reference from the Land Acquisition Officer. One of the references was that of the claimants in F.A. No.81/1987. The acquired area of the land in that case was 5960 sq.m. The Addl. District Judge vide his Award dated 19.3.87 fixed the market value of the land comprising of paddy fields at the rate of Rs.100/- per sq.m. The Division Bench modified the award of the Reference Court and held that fair market value of the land on the date of Notification would be Rs.80/- per sq.m. The matter was carried in appeal by the Corporation. While disposing of the appeal vide its Order dated July 7,1997 the Supreme Court passed the following Order :-

> " Though the respondents have been served, they are not appearing either in person or through counsel. Respondent No.2 has filed the Power of Attorney and the counter-affidavit.
>
> Leave granted.
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> Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the 'Act') was published on 10.7.1980 acquiring a large extent of land.

> Declaration under Section 6 was made on 7.9.1981. The Land Acquisition Officer awarded the compensation by his award dated May 2, 1981 @ Rs.20/- per sq. meter. On reference under Sec. 18, the District Judge by his award and decree dated 31.3.1987 enhanced the compensation to Rs.100/- per sq. meter. On further appeal, the High Court by its impugned judgment dated August 23, 19996 has partly allowed the appeal and reduced the market value of the land from Rs.100/- per sq. meter to Rs.80/- per sq. meter. Thus, this appeal by special leave.
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> Admittedly, the lands are agricultural lands as found by the High Court on page 43 of the paper book. Therefore, the lands could not be as assessed on that date as developed lands. Under these circumstances, it would be agricultural land. Taking into consideration the acts and circumstances of this case, we think that Rs.40/- would be the appropriate compensation.
>
> The appeal is accordingly allowed. The award and decree of the District Judge is modified to the above extent. The respondents are entitled to solatium and interest under the provisions of the Amended Act 68 of 1984 and additional amount under Section 21 of the Act. No costs. "

11. A thoughtful consideration of the judgment of the Supreme Court would show that it was in the light of the facts and circumstances obtaining therein that the Supreme Court thought it fit that Rs.40/- would be the appropriate compensation. This was made clear when the Supreme Court said "taking into consideration the facts and circumstances of this

case (emphasis supplied by me) we think that Rs.40/- would be the appropriate compensation."

12. As against this, the learned counsel for the claimant invited my attention to the later Judgment of the Supreme Court in the case of Communidade of Morombi-o-Pequeno (supra). That case related to acquisition of 6640 sq.m. of land situated in the vicinity of the subject land. Pursuant to the notification issued u/s 4(1) on 11.11.1977, the land was sought to be acquired for the purpose of establishing a museum. The land ad-measuring 6640 sq.m. comprised of 1125 sq.m. of paddy land, 2240 sq.m. of salt pan and 3320 sq.m. of nallah land. By his award dated 21.3.1978, the Land Acquisition Officer fixed the market value for the paddy field @ Rs.11/- per sq.m., for salt pan and Rs.10/- per sq.m. and for nallah land @ Rs.6/- per sq.m. Upon reference being made, the Reference Court fixed the price of Rs.80/- per sq.m. for the paddy land, Rs.60/- per sq.m. for the salt pan and Rs.20/- for the nallah land. This Court, in First Appeal preferred by the Corporation, set aside the order of the Reference Court and restored the amount fixed by the Land Acquisition Officer. Against the Judgment of this Court, the matter was carried in appeal to the Supreme Court. The Supreme Court set aside the Judgment of this Court and restored the Judgment of the Reference Court. The Supreme Court considered the matter thus :-

" 6. We have heard the parties at great length. In our view the High Court has fallen into error in coming to the conclusion that there was no evidence on record in respect of developmental costs. The High Court had noticed that the award in Land Acquisition Case No.2 of 1979 had been marked as an exhibit by consent. The Reference Court had also called for the record of that case and looked into that record. The Reference Court had found that the two lands were comparable. In that award developmental costs were taken into account. Further, the High Court completely overlooked the evidence of AW 2. During the course of his evidence he produced and proved, as an expert, a report prepared by him. In that report he had, inter alia, given the cost of development. This was as follows :

"Therefore, in order to fix the price of the land following deductions are made :

(a) 225/2.5 x 1.5 = Rs.135

(b) From 135, 15% is deducted for open space i.e. 20.20 sq.m.

© 5% for light and water i.e. Rs.6.25 per sq m.

(d)5% for asphalting or road i.e. Rs.6.25 per sq m.

(e) 30 cm of filling as per GSR rate 1974 which amounts to Rs. 10.82 which corresponds to Rs.3.25 for paddy field only.

(f) Additional filling of 50 cm for salt pan which corresponds to Rs.8.65 per sq m.

(g) For nallahas which are about 2 m deep the cost of filling corresponds to Rs.32.50 per sq. m."

7.Thus a detailed cost analysis for development for development purposes had been given by the witness of the appellant. The High Court overlooked the fact that on this aspect this witness was not

> cross-examined. On this aspect the respondents had led no contrary evidence. Therefore, there was evidence of what the development cost would be. After taking into consideration the development cost and considering the fact that certain portions of the acquired land were paddy lands, salt pans and nallahs, the figures of Rs.80, 60 and 20 had been worked out.
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> 8.It was submitted before us on the basis of the authority in the case of M.B. Gopala Krishna v. Special Dy. Collector, Land Acquisition that admittedly the acquired land was tenanted. It was submitted that the tenanted lands would not fetch the same amount as the land on which there were no tenants. This is not a reasoning on which the High Court has based the impugned judgment. Further, the tenants were only on the paddy land and the salt pans. Further, the price of Rs.80, 60 and 20 is arrived at after taking into consideration that these are tenanted lands. Therefore, we see no substance in this submission. "

13. That the acquired land which was under consideration before the Supreme Court in the case of Communidade of Morombi-o-Pequeno is comparable and similarly situated is not in dispute. In the case of Communidade of Morombi-o-Pequeno (supra), the notice under S.4(1) was issued about three years before the subject land was sought to be acquired pursuant to the Notification dated 19.2.1981. If for the land (paddy field), similarly situated and acquired pursuant to Notification dated 19.11.1977, the market value was fixed at Rs.80/- per sq.m., I find no justification in not applying the Judgment of the Supreme Court in the case of Communidade

of Morombi-o-Pequeno (supra) to the facts of the present case. It is true that the Order of the Supreme Court in Civil Appeal No.4431/1997 also relates to the comparable and similarly situated land whereby the Supreme Court has fixed the market value @ Rs.40/- per sq.m., but it cannot be overlooked that the Supreme Court itself in its Order in Civil Appeal No. 4431/1997 confined the said Order to the facts and circumstances of that case and the Judgment of the Supreme Court in the case of Communidade of Morombi-o-Pequeno (supra) is the later Judgment.

14. It is pertinent to note that in the present case the claimant led evidence and relied upon various Judgments and Awards passed earlier relating to similarly situated lands that included award in LAC No.2/1979. The award in LAC No.2/1979 was also a piece of evidence in the matter before the Supreme Court in Communidade of Morombi-o-Pequeno and the Supreme Court relied upon the award in Land Acquisition Case No.2/1979. Moreover, it is admitted position that in the award in LAC No.2/1979 the market value of the land that is comparable to the subject land was fixed at Rs.80 per sq.m. and the said award attained finality as its correctness was not challenged by the Corporation.

15. Then there is award in Land Acquisition Case No.19/1980 on record. That award related to the compensation for acquisition of an area

admeasuring 4640 sq.m. pursuant to the Notification dated 12.7.1977. That acquired land was originally salt pan, but, at the time of acquisition, was not put to any use and water logged. The land Acquisition Officer assessed the value of that land at Rs.20/- per sq.m. The Reference Court enhanced the compensation and fixed the market value at Rs.100/- per sq.m. The judgment and award dated 13.2.1985 in Land Acquisition Case No.19/1983 also attained finality whereby for land inferior to the subject land which was acquired more than three years before the acquisition of the subject land, the market value was fixed at Rs.100/- per sq.m. If for the land (salt pan) that was put to no use and water logged, the market value could be fixed at the rate of Rs.100/- per sq.m. in the year 1977, there is no justification for the reduction of the market value of the subject land from Rs.80/- fixed by the Reference Court.

16. Moreover, there is evidence of Rui Ribeiro Santana (AW2) in the resent case who after taking all relevant factors and instances has suggested the market value of the subject land between Rs.100 to Rs.150 per sq.m. Rui Ribeiro Santana is a Civil Engineer (approved Valuer) for immovable properties. In his deposition he stated that the acquired land was classified as central commercial zone and FAR was 150% on the date of the Notification issued u/s 4(1). According to him the acquired land could be used for building purposes as all facilities like water, telephone,

transport, etc. were available near the acquired land. The acquired land was abutting Panaji-Merces road and it had also access through the compound of Rego Hotel. He stated that the acquired land was 80 cms. below the road level and that fifty percent of the acquired land required filling if construction was to be carried out. According to him filling expenses would be Rs.19/- per cub.metre on the date of S.4 Notification. He stated that the acquired land was hardly 100 mtrs. from Kadamba bus stand; 30 mts. from Tarcar Petorl Pump; 30 mtrs. from Patto Colony Quarters; 15 to 20 mtrs. from Cardozo Building, etc. In his valuation report he set out the awards in earlier cases and various sale instances and the reasons for reaching the conclusion that the market value of the subject land shall range between Rs.100 to Rs.150 per sq.m. The evidence of AW2 is that of an expert. He has given the cost and analysis for development purposes and also the potentiality of the subject land. The cross-examination of this witness does not shake his evidence. There is no evidence in rebuttal of any nature whatsoever by the Corporation. Based on the evidence of AW2 and his valuation report also, the market value fixed by the Reference Court at the rate of Rs.80/- per sq.m. cannot be said to be excessive.

17. For all these reasons, I am satisfied that no interference is called for in the Judgment and Award of the Reference Court.

18. Both the Appeals are, accordingly, dismissed. No order as to costs.

R. M. LODHA, J.

sl.